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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,488	02/15/2001	Cheryl L. Galante	00216-528001/T-680	1716

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EXAMINER

LAMM, MARINA

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 04/10/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/784,488

Applicant(s)

GALANTE ET AL.

Examiner

Marina Lamm

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 and 60 is/are pending in the application.
- 4a) Of the above claim(s) 60 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,6,8,10. 6) ☐ Other:

DETAILED ACTION

Claims 1-57 and 60 are pending in this application filed 2/15/01. Acknowledgment is made of the Declaration under 37 C.F.R. § 1.131 filed 6/18/01.

1. The Declaration filed on 6/18/01 under 37 CFR 1.131 is sufficient to overcome the DE 199 21 183.3 reference published 11/9/2000.

Election/Restrictions

2. Applicant's election of Group I, Claims 1-57 in Paper No. 9 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
3. Claim 60 is withdrawn from further consideration as directed to non-elected invention.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 14, 15, 43, 46, 48 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Shelton (US 4,202,879).

Shelton '879 teaches a three phase antiperspirant solid stick containing (1) 35-65% of a solid antiperspirant phase comprising a high melting point wax, an organic emollient, an antiperspirant active and, optionally, coloring materials; (2) 35-65% of a gel phase comprising polyols, and, optionally, deodorant materials and coloring materials; and (3) 1-10% of a barrier phase comprising a high melting point wax, an organic emollient, and optionally,

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coloring materials. See Abstract; col. 2, lines 43-51, 55-61; col. 3-14; Example III. The sticks of Shelton '879 are packaged in conventional containers. See col. 16, lines 14-19; Figures. All three phases are exposed in a single application surface. See col. 15, lines 13-15. The phases may be concentric or planar. See col. 15, lines 64-68; Figures 3 and 4. The antiperspirant and barrier phases are generally both opaque and white, while the gel phase is transparent and can be colored. See col. 15, lines 26-35.

Thus, Shelton '879 teaches each and every limitation of Claims 14, 15, 43, 46, 48 and 49.

6. Claims 43, 48-50, 55 and 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Shelton (US 4,120,948).

Shelton '948 teaches a two phase antiperspirant stick containing (1) 40-60% of an anhydrous antiperspirant phase comprising a high melting point wax, an organic emollient, and an antiperspirant active; and (2) a gel phase comprising polyols, and, optionally, coloring materials. See Abstract; col. 2-10. The sticks of Shelton '948 are packaged in conventional containers. See col. 11, lines 33-37. The antiperspirant phase is formed as a core of any suitable shape and the gel phase is formed as a shell surrounding the antiperspirant phase. See col. 11, lines 5-8. The antiperspirant and gel phases may have different colors. See Examples.

Thus, Shelton '948 teaches each and every limitation of Claims 43, 48-50, 55 and 56.

7. Claims 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Banowski et al. (WO 99/23998).

Banowski et al. teach dermatological stick formulations comprising two or more separate, differently composed gel phases, wherein the phases contain deodorant or

antiperspirant actives. See Abstract; p. 4; pp. 19-20, Example 3. The phases can be transparent and differently colored. See p. 6; Examples.

Thus, Banowski et al. teach each and every limitation of Claims 14 and 15.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-4, 6, 7, 9, 10, 12, 16, 43-45, 47-52 and 54-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banowski et al.

Banowski et al. teach dermatological stick formulations comprising two or more separate, differently composed gel phases as discussed above. The gel phases can contain 0.1-30% of cosmetic or dermatological active agents. See p. 6. Among these active agents are deodorants (e.g. antimicrobials, perfumes) and antiperspirants (e.g. sodium-aluminum chlorhydrolactate). See p. 4.

Banowski et al. do not explicitly teach that both phases of their compositions contain antiperspirant salts. However, the reference teaches that the compositions may contain antiperspirants and also exemplifies two-phase formulations containing active ingredients (e.g. phenoxyethanol) in both phases. See pp. 19-20. Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to use antiperspirant salts in both phases of Banowski's stick formulation with a reasonable expectation of

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beneficial success because the reference suggests that active agents can be present in both phases and antiperspirant salts can be used as active agents.

10. Claims 5, 8, 11, 13, 17-42, 46 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banowski et al. in view of Shelton' 879.

Banowski et al. applied as above.

With respect to Claims 5, 11, 20, 27, 34, 40, 46 and 53, Banowski et al. do not teach lengthwise-extending stripe.

However, Shelton' 879 teach multi-phase antiperspirant stick wherein the phases may concentric or planar. See col. 15, lines 64-68; Figures 3 and 4. Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to combine the teachings of Banowski et al. and Shelton' 879 in order to achieve various, aesthetically appealing patterns of the application surface.

With respect to Claims 8, 13 and 17-42, Banowski et al. do not teach volatile silicone and/or high melting wax. However, Shelton' 879 teach using volatile silicones as organic emollients in antiperspirant stick compositions. See col. 5, lines 13-14. The organic emollients of Shelton' 879 "impart a soft, supple character to skin treated with the instant stick compositions." See col. 4, lines 51-56. Cyclomethicone of Claims 23 and 30 is a conventional volatile silicone. Further, Shelton' 879 teach using a high melting wax in their stick compositions in order to provide "a structure that can be sheared during application to the skin, thereby depositing layers of wax and antiperspirant active particles onto the skin." See col. 4, lines 15-48. Therefore, one of ordinary skill would have been motivated to employ volatile silicone and/or high melting wax of Shelton' 879 in dermatological stick compositions

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of Banowski et al. for their art-recognized purpose and with a reasonable expectation of beneficial results discussed above.

11. Claims 17, 20, 22, 23, 31, 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shelton' 879.

Shelton '879 teaches a three phase antiperspirant solid stick as discussed above. The barrier phase of the compositions contains the same organic emollients as the antiperspirant phase, including volatile silicones. See col. 13, lines 53-61. Cyclomethicone of Claim 23 is a conventional volatile silicone. The barrier phase also contains a high melting wax. See col. 13, lines 28-50. Both antiperspirant and barrier phase may optionally contain coloring agents and dyes. See col. 7, lines 64-65; col. 14, lines 32-33. Therefore, Shelton '879 encompasses the compositions wherein antiperspirant and barrier phases are differently colored. The phases may concentric or planar. See col. 15, lines 64-68; Figures 3 and 4.

The difference between the instant claims and the compositions of Shelton '879 is that the compositions of Shelton '879 contain 1-10% of the barrier phase, while the instant claims recite "at least 15% of the application surface." However, it would be conventional and within the skill of the art to identify the optimal proportion of phases in order to achieve the desired dimensional stability of the phases and visual quality.

12. Claims 46 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shelton' 948 in view of Shelton' 879.

Shelton' 948 applied as above.

While teaching that the core and the shell of the compositions may be of any suitable shape (col. 11, lines 5-8), Shelton' 948 does not explicitly teach lengthwise-extending stripe of the

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instant claims. However, Shelton' 879 teach multi-phase antiperspirant stick wherein the phases may concentric or planar. See col. 15, lines 64-68; Figures 3 and 4. Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to combine the teachings of Shelton' 948 and Shelton' 879 in order to achieve various, aesthetically appealing patterns of the application surface.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 4,524,062.

14. No claim is allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541.

The examiner can normally be reached on Monday to Friday from 9 to 5.

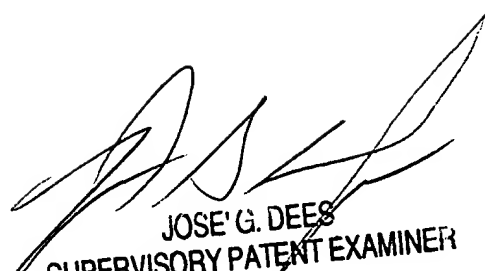
The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

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4/3/02


JOSE G. DEES
SUPERVISORY PATENT EXAMINER
1616